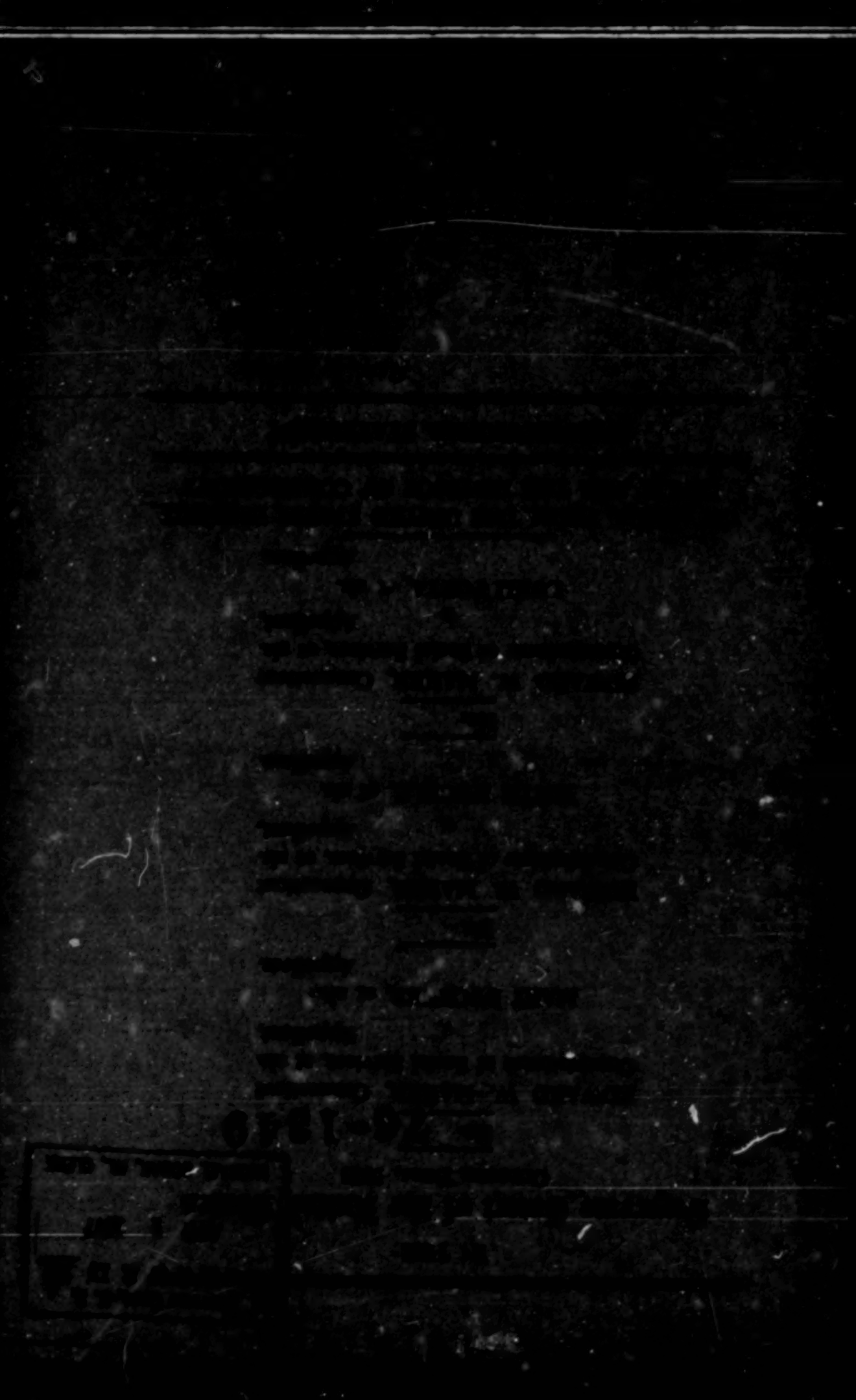

SUBJECT INDEX

TABLE OF CITATIONS

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. A-760

EDWARD W. MAHER, Connecticut Commissioner of Social Services, et als.
Appellant,
v.
MARY BUCKNER, et als.
Appellees.

EDWARD W. MAHER, Connecticut Commissioner of Social Services, et als.
Appellant,
v.
EDITH HUCKLE, et als.
Appellees.

EDWARD W. MAHER, Connecticut Commissioner of Social Services, et als.
Appellant,
v.
LUIGI PORTA, et als.
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

JURISDICTIONAL STATEMENT

Appellant appeals from the judgment of a three-judge United States District Court for the District of Connecticut, entered on January 17, 1976, which declared Section 17-85 and Section 17-109, General Statutes of Connecticut, Rev. of 1958,

as amended, to be unlawful and unenforceable because said statutes are contrary to federal law (Social Security Act) insofar as said Statutes provide that an applicant who, within seven years, has made a transfer of his (her) assets without receiving reasonable consideration in return therefor, shall be ineligible for public assistance benefits under the Aid to Families With Dependent Children (AFDC) program and/or the Title XIX Medical Assistance (Medicaid) program;[1] and therefore violative of the Supremacy Clause of the Constitution of the United States, and permanently enjoined their further enforcement, and submits this statement to show that the Supreme Court of the United States had jurisdiction and that a substantial question is presented.

OPINION BELOW

The opinion of the three-judge District Court which is the subject of this appeal is reported at 424 F.Supp. 366 (1976). A copy of that opinion is attached hereto as Appendix A (A-2).

JURISDICTION

These actions were brought by plaintiffs (appellees) under 42 U.S.C. § 1983 and jurisdiction was based on 28 U.S.C. § 1343 and 28 U.S.C. § 2281. The plaintiffs were seeking injunctive relief restraining the appellant-state Commissioner of Social Services from the enforcement, operation and execution of statutes of statewide applicability on the grounds of their conflict with federal law and on the further ground of their unconstitutionality.

The three-judge District Court, after a hearing on the several plaintiffs' respective motions for summary judgment,

[1]Under the provision of both statutes, ineligibility "because of such disposition [of assets] shall continue only for that period of time from the date of disposition over which the fair value of such property, together with all other income and resources, would furnish support on a reasonable standard of health and decency . . ."

and defendant's motion to dismiss for want of jurisdiction, entered summary judgment on January 17, 1977, a copy of which is attached hereto as Appendix B (A-17), and notice of appeal was filed in that court on January 26, 1977, attached as Appendix C (A-19).

The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by 28 U.S.C. § 1253.[2]

Although the three-judge court based its decision upon a finding of a conflict between state and federal law (the statutory question) and therefore did not reach the constitutional question, nevertheless, the following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in these cases:

Brotherhood of Locomotive Engineers v. *Chicago, Rock Island & Pacific Railroad Company*, 382 U.S. 423, 428;
Hagans v. *Lavine*, 415 U.S., 528, 543
Philbrook v. *Glodgett*, 421 U.S., 707.

STATUTES INVOLVED

Section 17-85 and Section 17-109(e) of the General Statutes of Connecticut, Revision of 1958, as amended, are the Connecticut statutes involved in this action[3] and are fully set forth as Appendix D (A-21).

§ 17-85 reads, in relevant part:

"Any relative having a dependent child or dependent children, who is unable to furnish suitable support there-

[2]These actions were instituted prior to August 12, 1976, when Public Law 94-381 was enacted by Congress, repealing 28 U.S.C. § 2281.

[3]The Connecticut Department of Social Services implements these statutes through Sections (Indices) 326-326.2 of its public assistance policy manual, which sections are reproduced as attached Appendix H (A-39).

for in his own home, shall be eligible to apply for and receive the aid authorized by this part . . . *if such applicant has not made, within seven years prior to the date of such application for aid, an assignment or transfer or other disposition of property without* [receiving in return therefor] *reasonable consideration* or for the purpose of qualifying for an award . . . provided ineligibility because of such disposition shall continue only for that period of time from the date of disposition over which the fair value of such property, together with all other income and resources, would furnish support on a reasonable standard of health and decency." [Emphasis added.]

Connecticut General Statutes § 17-109[4] reads in relevant part:

"Any person shall be eligible for an old age assistance award who . . . (e) has not made, within seven years prior to the date of application for such aid, an assignment or transfer or other disposition of property without reasonable consideration or for the purpose of qualifying for an award . . ."

QUESTION PRESENTED

Under Connecticut's partially federally-financed Aid To Families With Dependent Children (AFDC) Program, and its Title XIX Medical Assistance (Medicaid) Program, a Connecticut statute (Section 17-85 for AFDC and Section 17-109 for Medicaid) provides, *inter alia*, that an applicant for public assistance, under either of the aforesaid programs, must not have made, within seven years prior to the date of such application for aid, an assignment or transfer or other disposition of assets without receiving, in return therefor,

[4]The provisions of this Section are extended to Title XIX pursuant to Section 17-134e, General Statutes of Connecticut.

reasonable consideration[5] provided that any resulting ineligibility because of such disposition shall continue only for that period of time from the date of disposition over which the fair value of such property would furnish support to the applicant on a reasonable standard of health and decency.[6]

The questions presented by this appeal are:

(1) Is the statutory requirement of Connecticut's AFDC and Title XIX Medicaid programs which renders ineligible an applicant who has made a transfer of his property, without receiving fair value in return therefor (or any value whatever), in conflict with the Social Security Act?[7]

(2) Was it the intent of Congress, when it enacted the Social Security Act, to permit a person to give away all his assets and thereby render himself incapable of providing for his own maintenance and support, and thereupon qualify for public assistance under the federally-funded AFDC and/or Title XIX Medical Assistance Program?

STATEMENT

This action is one in which three separate actions were consolidated for purposes of a hearing on the respective plaintiffs' motions for summary judgment. In the *Mary*

[5]The statute contains a further prohibition against a disposition of assets without receipt of fair value, namely, that such a transfer cannot have been made ". . . for the purpose of qualifying for an award [of public assistance]". The lower court stated that this second ground for disqualification was not involved in this litigation. *Memorandum of Decision, footnote* 10 (A-15).

[6]This "reasonable standard of health and decency" is determined in accordance with the Department of Social Services' policy Manual, Index 344.2 and is the same standard (of financial exemption) allowed to a "legally-liable relative" to whom the State would look for support of a dependent for whom there is a legal obligation of support.

[7]And, in particular, 42 U.S.C. § 602(a)(7) (for AFDC); and 42 U.S.C. § 1396a(a)(10)(a) and (c) (for Title XIX).

Buckner case,[8] the plaintiff, while a resident of the State of Colorado, was twice divorced, once in 1973 and again in 1975. Shortly after the second divorce, she moved to Connecticut, and in July, 1975, applied for public assistance under the Aid to Families With Dependent Children (AFDC) program. She informed the Department of Social Services that, after each divorce, she had conveyed her interest in the real property, which had been the family residence, to the husband she was divorcing, and, in each instance, she stated that the interest she conveyed had no net value because the property was fully encumbered by an outstanding mortgage debt. She offered no evidence which would corroborate this claim. As to the second conveyance, the Department of Social Services, through correspondence it initiated itself, accepted the assurance, contained in a letter from a Colorado attorney, that there was no substantial equity remaining in the property at the time of transfer. As to the first conveyance however, the Department was unable to secure any evidence through its own efforts to substantiate Mrs. Buckner's claim, and the plaintiff herself did not, after making her application, offer any further evidence to the Department. The plaintiff's application was therefore held in a pending status awaiting further information.

Plaintiff Buckner subsequently consulted an attorney of the Tolland-Windham Legal Assistance Agency, and, in response to his demand that the Department either approve or deny the application, her application for assistance was denied on December 18, 1975.

Unlike the other plaintiffs in these consolidated cases, plaintiff-Buckner did not seek a review of the Department's denial of her application by means of an administrative fair

[8]*Buckner* v. *Maher*, Civ. No. H-75-411, filed December 30, 1975.

hearing,[9] electing instead to challenge the State policy in federal district court.

In the companion *Porta* case,[10] the present plaintiffs are two intervenors: Peter Galonek and Richard Bennett, both of whom were applicants for medical assistance under Connecticut's Title XIX Medicaid program.

Plaintiff Galonek applied for medical assistance on October 28, 1975, and his application was denied on January 29, 1975, because the Department of Social Services found that he had made a transfer to his daughter, on October 25, 1974, of his one-half interest in his residence and did not receive, in return for the transfer, the fair value of the property. He requested and received an administrative fair hearing on the denial of his application. The Memorandum of Decision of the fair hearing officer, attached as Appendix F (A-27), was issued on April 20, 1976, in which it was found, *inter alia*, that the value of Mr. Galonek's one-half interest was $11,843.00 and the decision of the Department denying the application was upheld.[11]

Co-intervenor in *Porta* was Richard Bennett. Plaintiff Bennett applied for Title XIX medical benefits on June 5, 1975,

[9]Pursuant to Section 17-2a and 17-2b, General Statutes of Connecticut, Revision of 1958.

[10]*Porta* v. *Maher*, Civ. No. 15,068, U.S. Dist. Court (District of Conn.) filed May 30, 1972, in which the district court invoked the doctrine of abstention. Plaintiff Porta subsequently died in 1974 before the present plaintiffs intervened. The district court held, however, that the action had not become moot. See footnote #1 to memorandum of decision (A-14).

[11]At the fair hearing there was an apparent conflict between the testimony of Mr. Galonek and that of his daughter. He testified that he sold the property to his daughter for $5,000.00. His daughter testified that she was entitled to the property because she had come to live with her parents at their request because they were unable to care for the home, and that she was told the home would be given to her in return for this care. She claimed that the transfer to her of her father's interest in the home was not made in exchange for $5,000.00 but that the $5,000.00 payment to her father was to enable him to take a trip to Poland. *Fair Hearing Memorandum of Decision* (A-27).

and his application was denied on September 2, 1975, because he had made a transfer of property without receiving fair value in return therefor. He then requested and received an administrative fair hearing on the denial of his application which was held on November 5, 1975. The fair hearing officer found, *inter alia* (Appendix C, A-36), that Mr. Bennett had sold his home on July 20, 1972, and had received net payment from the sale in the amount of $34,850.00. In addition, it was found that from the date of sale to the time of application, Mr. Bennett had received a total of $5,797.00 in Social Security income. The fair hearing also disclosed (A-37) that Mr. Bennett had withdrawn from his savings account, in the seven month period immediately prior to his application for assistance, a total of $13,961.89. Mr. Bennett either could not or would not account for how this money was disposed of and the Department's decision denying his application for transfer of property without receipt of fair value was upheld.

In the companion *Huckle* case,[12] the plaintiff, Edith Huckle, had been receiving AFDC benefits when it was discovered by the Department of Social Services that she was the owner of valuable real estate located in Brooklyn, New York, although, on her application for assistance, she had indicated that she owned no such property. Plaintiff Huckle then told the Department that the property in question did not really belong to her, and that it had been conveyed to her by her father, who was ill, to be held "in trust" for her mother who, it was alleged, was not capable of managing her own affairs. She was thereupon informed that she could not continue to receive public assistance benefits unless she were willing to assign this property to the Department.[13] This

[12]*Huckle* v. *Maher*, Civ. No. H-76-190, U.S. District Court, (Dist. of Conn.), filed on May 5, 1976.

[13]Pursuant to Section 17-114, Gen. Stat. of Conn., Rev. of 1958, as amended.

she refused to do and she was discontinued from further participation in the AFDC program.

Plaintiff Huckle thereupon requested and was subsequently given an administrative fair hearing at which the decision of the Department to terminate her assistance was upheld (Appendix I, A-44 at 46). Thereafter, through her legal assistance attorney, and prior to bringing her action in federal district court, she took an appeal from the fair hearing decision[14] to the Connecticut Court of Common Pleas. That appeal is still pending and, because of this, the district court, in its memorandum of decision, has decided that this case "would be an appropriate instance in which to defer a decision, pending the completion of state action," citing *Huffman* v. *Pursue*, 420 U.S. 592 (1975) (A-12). Consequently because of this action by the district court, *Huckle* v. *Maher*, *supra*, is not involved in this appeal.

THE QUESTIONS ARE SUBSTANTIAL

The question presented by this appeal is an important public question which has not heretofore been decided by the Supreme Court. That question is: Is it reasonable to believe, as the district court did in this action, that Congress, when it enacted the AFDC[15] and the Title XIX[16] portions of the Social Security Act, intended that non-needy persons of means would be allowed to dispose of their assets (most commonly by giving them to a relative) so as to pauperize themselves, and thereupon qualify for these public assistance and medical benefits because they were now "needy"? The appellant-Connecticut Commissioner of Social Services believes that the answer to this question should now be settled

[14]Pursuant to Section 17-2b, Gen. Stat. of Conn., Rev. of 1958, as amended.

[15]42 U.S.C. § 601, *et seq.*, and especially 42 U.S.C. § 602(a)(7).

[16]42 U.S.C. § 1396, *et seq.*, and especially 42 U.S.C. § 1396(a)(10)(C)(i).

by the Supreme Court since it has nationwide ramifications, and will have a very substantial fiscal impact on all of the States as well as on the federal government.[17]

I.

THE DISTRICT COURT DID NOT EMPLOY THE NORMAL RULES OF STATUTORY CONSTRUCTION.

In its Memorandum of Decision, the three-judge District Court found (at A-10) "that the Connecticut rule has the effect, if not the avowed intent, of presuming that transferred assets are still available to the transferor." Immediately prior to this finding in the District Court's Memorandum of Decision, the lower court represented that:

> "The state has argued that its present statutory rule is 'reasonable', but the reasonableness of the rule is not in issue. Rather the question is whether Connecticut's 'transfer-of-assets' rule is inconsistent with federal law."
>
> Memorandum of Decision, *supra*.

This was *not* an accurate representation of the State's position, either in its brief or at oral argument. The defendant-Commissioner did not presume that assets transferred without receipt of fair value remained available to the plaintiffs. Nor did the State attempt to justify its "transfer-of-assets" statutes primarily on the grounds that they were "reasonable." (Al-

[17]In a recent issue of the New York Times, (January 2, 1977, pp. 1 and 32) it was reported that the cost of the Title XIX Medicaid program, nationally, is rising at the rate of $3 billion a year. That article further stated that "the poor families for whom Medicaid was conceived . . . make up more than half the population but this year will spend only $6 billion, one-third of the total." However, that article continues, "[t]he elderly in nursing homes, these figures [from federal data] indicate, make up about 5 percent of the eligible population and account for 40 percent of the expenditures." It is in this area of costly care for the elderly that gifts of bank accounts or real estate to younger family members are most likely to occur.

though, of course, the Commissioner does believe them to be reasonable.)

The State's position was that although federal law is silent on the State requirement of receipt of fair value for a transfer of assets, the State statutes in question were *not* in conflict with federal law. The HEW regulation (at 45 C.F.R. § 233.20(a)(3)), interpreting 42 U.S.C. § 602(a)(7), provides that in determining eligibility, only such assets as are "actually available" can be considered. For Title XIX, 45 C.F.R. § 248.3(a)(2)(b)(1), contains a similar provision. The defendant-Commissioner argued that it could never have been the *intent* of Congress, when it enacted the Social Security Act, to allow a non-needy person, who had sufficient means (assets) to support himself, to give away all such assets (most commonly by making a gift to a relative) and thereby render himself no longer able to provide for his own support;[18] and then demand that the State thereafter provide for his support from public funds because he was now "needy". To conclude that Congress could have intended such a result is simply contrary to the normal rules of statutory construction as discussed *infra*.

Since the District Court, in its Memorandum of Decision, never addressed itself to the claims of the defendant-Commissioner as to the *intent* of Congress in enacting the Social Security Act, *supra*, the defendant believes that the lower court, when construing the federal statute, did not employ the normal rules of statutory construction, but instead, relied on the now discredited "special rule" of statutory construction, seemingly applied in some instances in earlier federal welfare litigation,[19] which holds that the imposition

[18]Excerpt from Transcript of Oral Argument, pp. 66-68, attached hereto as Appendix E (A-24).

[19]E.g., *King* v. *Smith*, 392 U.S. 309 (1968); *Townsend* v. *Swank*, 404 U.S. 282 (1971); *Carleson* v. *Remillard*, 406 U.S. 598 (1972).

by a State of *any* condition on welfare eligibility which is not *expressly* authorized by the federal statute is in conflict with federal law. This "rule" of construction was expressly rejected by this Court in *Burns* v. *Alcala*, 420 U.S. 575 (1975), wherein the Court stated:

> "Several of the courts that have faced this issue have read *King, Townsend and Carleson, supra,* to establish a special rule of construction applicable to Social Security Act provisions governing AFDC eligibility. They have held that persons who are arguably included in the federal eligibility standard must be deemed eligible unless the Act or its legislative history clearly exhibits an intent to exclude them from coverage, in effect creating a presumption of coverage when the statute is ambiguous [citations omitted]. This departure from ordinary principles of statutory interpretation is not supported by the Court's prior decisions . . ."

Burns v. *Alcala, supra,* at 580.

This express rejection of such a "special rule" of statutory construction in *Alcala, supra,* was anticipated by this Court in *N.Y. State Dept. of Social Services* v. *Dublino*, 413 U.S. 405 (1973), in which a New York state work registration requirement for AFDC recipients was upheld, the Court finding, *inter alia*, that the Social Security Act allows for complementary state work incentive programs and procedures incident thereto, even if they become conditions for continued assistance (413 U.S. at 421-22).

Rather than beginning an analysis of the statutes in question, as the district court seems to have done, with a presumption that applicants who have given away all their assets are eligible for these public assistance programs because such assets are no longer "actually available," the normal

principles of statutory construction should be applied in a search for the Congressional intent as it bears on this case.

A basic rule of construction states that where the language of a statute is silent or ambiguous, a statute is not to be interpreted so as to achieve an absurd result. It is also well established that the interpretation placed upon a statute by the agency authorized by Congress to administer a program is entitled to deference. *Udall* v. *Tallman*, 380 U.S. 1 (1965); *Thorpe* v. *Housing Authority of the City of Durham*, 398 U.S. 268 (1969). Yet another rule of construction states that separate provisions of a statute (or a regulation) dealing with the same subject matter must be read in *pari materia*.

II.

HEW'S ASSET LIMITATION ON ELIGIBILITY FOR PUBLIC ASSISTANCE CAN BE EASILY CIRCUMVENTED UNDER THE DISTRICT COURT'S DECISION.

Turning then to the federal regulations (of HEW) contained at 45 C.F.R. § 233.20(a)(3)(ii)(c), we find that the Secretary has provided that, in determining eligibility: ". . . (c) only such net income as is actually available for current use on a regular basis will be considered, *and only currently available resources will be considered;*" [emphasis added]. If we were to look no further and rely exclusively on this provision of the regulations, as both the plaintiffs and the district court apparently have done, it would appear that the Secretary's interpretation of the federal statute would indeed permit one to give away all his assets and thereupon qualify for assistance. But there is another provision in this section of the regulations which both the plaintiffs and the district court have chosen to ignore. That provision is contained at 45 C.F.R. § 233.20(a)(3)(i) and provides, *inter alia*, that:

". . . In addition to the home, personal effects, automobile and income producing property allowed by the agency, the amount or real and personal property, including liquid assets, that can be reserved for each individual recipient *shall not be in excess of two thousand dollars* . . ." [emphasis added]

Thus it is clear from the Secretary's interpretation of the statute, that Congress intended to place an asset limitation on the amount of non-exempt resources which a recipient of public assistance could possess and still remain eligible for benefits under the program. But if, as the district court has in effect held, a person can give away all his assets and thereby become eligible for the program because those assets are no longer "currently available," the asset-limitation provision of § 233.20(a)(3)(i), *supra*, is rendered virtually meaningless because a prospective applicant for public assistance can circumvent that limitation simply by giving away his property to a relative.

III.

A STATUTE SHOULD NOT BE INTERPRETED SO AS TO REACH AN ABSURD RESULT.

Thus, the decision of the district court does violence to that principle of statutory construction which holds that a statute should not be interpreted so as to arrive at an absurd result. And absurdities do indeed follow from such an interpretation. For example:

1. Non-needy persons are permitted by their own deliberate conduct, to make gifts to relatives which, in the final analysis, are subsidized from limited public welfare funds;

2. The claims which these previously "non-needy" persons thereafter make upon limited public welfare funds

serve to reduce the amount of these funds which are then available for the truly needy — the people for whose needs Congress thought it was providing when it first enacted the legislation;

3. If such a conveyance (without receipt of fair value) were made by an insolvent debtor, then, under the law of virtually every State, it could be set aside as a fraudulent conveyance upon one's creditors. This has been a feature of Anglo-American law as to private persons since, at least, the passage by Parliament of the Statute of Elizabeth in 1570.[20] Is it reasonable to suppose that Congress did not intend that *public funds* should be given the same protection which the law gives to private creditors?

4. Finally, to allow such transfers without receipt of fair value in return is simply contrary to the old equitable maxim that "one must be just before he is generous." To be "just" in this case is to discharge the implied duty which all members of society owe to each other, i.e., to expend one's own resources to provide for one's own care before making a claim for such care upon limited public funds.

IV.

UNDER THE DISTRICT COURT'S DECISION, THE COST OF PUBLIC ASSISTANCE PROGRAMS COULD INCREASE ALARMINGLY.

If the decision of the district court is permitted to stand in this action, the appellant-Commissioner is most fearful that transactions such as that depicted in the case of *Ida Hansen*

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[20]Clark, George L., *Summary of American Law*, the Lawyers Co-operative Publishing Company, Rochester, New York (1947) p. 390.

v. *Norton*,[21] will become commonplace. In that case, the plaintiff, on May 22, 1973, transferred $27,427.88 from her savings account to trust accounts for her grandchildren to be used for their college expenses. Less than a year later, on April 5, 1974, the plaintiff, who was then a patient in a convalescent home, applied for medical assistance under Connecticut's Title XIX program claiming to be indigent. The Connecticut Supreme Court found, on the basis of Section 17-109(e) (one of the statutes which have been struck down in this action), that the plaintiff was not eligible for Medicaid benefits since she had not received fair value in return for the transfer of the money. If such gifts of very substantial sums of money will now enable the donor thereof immediately to qualify for the State's AFDC and/or Medicaid programs, there is no way of telling in advance what the future costs of these programs will be, but that cost is likely to increase tremendously.

It is submitted that Connecticut's policy of prohibiting a prospective applicant for public assistance from pauperizing himself, by his own deliberate act of giving away his assets, is a state-imposed condition of eligibility that is perfectly consistent with the basic policies of both the AFDC public assistance program and the Title XIX Medicaid program.

CONCLUSION

There are at least two reasons why the questions presented by this appeal are sufficiently substantial as to require plenary consideration:

1) the resolution of the question of whether it is permissible under federal law for a person of substantial means

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[21]Decided by the Connecticut Supreme Court by opinion issued in the Connecticut Law Journal of January 25, 1977, a copy of which is attached hereto as Appendix J (A-47).

to pauperize himself by giving away his property (or by transferring it for less than its fair value), and thereupon become eligible to receive AFDC and/or Medicaid benefits will have immediate importance far beyond the particular facts and parties involved in this case;

2) the three-judge district court has decided a question of federal law which has not previously, but should now be, settled by this Court.

Respectfully submitted,

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APPENDIX A

United States District Court

District of Connecticut

MARY BUCKNER, on her own behalf, on behalf of her household and on behalf of all others similarly situated

v.

EDWARD MAHER, individually and in his capacity as Commissioner of Social Services of the State of Connecticut

Civil No. H-75-411

EDITH M. HUCKLE, a/k/a CARRIE MURPHY, on her own behalf, on behalf of her household and on behalf of all others similarly situated

v.

EDWARD MAHER, individually and in his capacity as Commissioner of Social Services of the State of Connecticut

Civil No. H-76-190

LUIGI PORTA, on behalf of himself and all others similarly situated

v.

EDWARD MAHER, individually and in his capacity as Commissioner of Social Services of the State of Connecticut

Civil No. 15,068

Before: SMITH, *Circuit Judge*, CLARIE and BLUMENFELD, *District Judges*.

MEMORANDUM OF DECISION

CLARIE, *District Judge:*

The plaintiffs in these consolidated actions[1] have sued on behalf of themselves and others similarly situated, to invalidate two Connecticut statutes (Conn. Gen. Stat. §§ 17-85 & 17-109(e)), which have rendered them ineligible for welfare benefits under two federally sponsored programs, Medicaid and Aid to Dependent Children (AFDC). They have been unable to satisfy the state statutory requirement that applicants who have transferred assets within seven years prior to applying for benefits must be able to prove that the transfer was in fact made for "reasonable consideration" — that is, for no less than fair market value minus encumbrances. The plaintiffs maintain that these statutory provisions are inconsistent with the federal Social Security Act (SSA), and thus violate the Supremacy Clause of Article VI of the Federal Constitution. They also contend that these state statutes violate their constitutional right to due process and equal protection. The plaintiffs seek declaratory and injunctive relief under 42 U.S.C. § 1983 and a three-judge court has been convened pursuant to 28 U.S.C. §§ 2281 *et seq.*, to consider their challenge to the foregoing state statutes.

The defendant, Commissioner of Social Services for the State of Connecticut, requests the court to dismiss the three pending actions, on the grounds that the constitutional arguments raised by the plaintiff are frivolous and that there is no basis on which the court might properly consider the pendent statutory claims.[2] The Commissioner argues that, even if the constitutional claims raised in these actions were deemed to be substantial, it is appropriate that a single judge decide all such statutory questions, not a three-judge constitutional court.

Said defendant maintains that there is no inconsistency between Connecticut's statutory limitation on welfare eligibility and the federal Social Security Act. He argues that, with respect to the cases of the plaintiffs Huckle and Buckner, favorable action was denied, not because there was a finding of insufficient consideration per se, but rather because the applicants had failed to supply sufficient information upon which the Commissioner could base an eligibility decision.

The court is not unmindful of the legitimate state need for strong legislative controls to curb fraudulent transfers undertaken for the very purpose of qualifying the property transferor for immediate welfare assistance. However, the court finds that the Connecticut "transfer-of-assets" statutes are inconsistent with the minimal qualifying requirements of the federal Social Security Act, that those laws are in violation of the Supremacy Clause and that the plaintiffs' constitutional claims are not frivolous. The plaintiffs' motions for class certification are granted.

FACTS

There is no dispute as to the material facts of these cases, a stipulation having been mutually agreed to and filed by counsel. Medicaid (42 U.S.C. §§ 1396 *et seq.*) and AFDC (42 U.S.C. §§ 601 *et seq.*) are federally sponsored welfare programs. In states which choose to participate in one or both, a particular state agency (typically the state welfare department) is designated to administer the program. Some parameters of that agency's operations are prescribed in advance by the Social Security Act. For instance, the Act establishes eligibility criteria from which the states are not free to deviate. For Medicaid the sole criterion for eligibility set up in the SSA is need;[3] and for AFDC the criteria are need and dependency.[4]

Other parameters of the state agency's operations are left expressly to state choice under the SSA. Thus a state is free to select the level of payments which will be authorized for recipients in particular disadvantaged categories. In matters for which a locus of decision is not prescribed by the SSA or its regulations, the states may adopt reasonable rules and regulations. For example, 42 U.S.C. § 1396a(a)(10)(C) (Medicaid) and 42 U.S.C. § 602(a)(7) (AFDC) provide that the state agency must take into account the "income and resources" available to an applicant in determining need. Subject to certain statutory restrictions,[5] the states are given reasonable latitude in carrying out this determination.

The two Connecticut statutes here in question purport to fall within this final category. Conn. Gen. Stat. § 17-85 reads, in relevant part:

> "Any relative having a dependent child or dependent children, who is unable to furnish suitable support therefor in his own home, shall be eligible to apply for and receive the aid authorized by this part . . . *if such applicant has not made, within seven years prior to the date of such application for aid, an assignment or transfer or other disposition of property without reasonable consideration* or for the purpose of qualifying for an award . . . provided ineligibility because of such disposition shall continue only for that period of time from the date of disposition over which the fair value of such property, together with all other income and resources, would furnish support on a reasonable standard of health and decency." [Emphasis added.]

Conn. Gen. Stat. § 17-109 reads in relevant part:

> "Any person shall be eligible for an old age assistance award who . . . (e) has not made, within seven years prior to the date of application for such aid, an assign[illegible] or transfer or other disposition of property without reasonable consideration or for the purpose of qualifying for an award. . . ."

The statute then proceeds to incorporate the language of § 17-85 with respect to the disqualification period. As used in these statutes, "reasonable consideration" has been interpreted to mean "fair value," which in turn is defined as "appraised or market value of the property in question, minus recorded encumbrances."[6]

The practical operation of Connecticut's "transfer-of-assets" rule is demonstrated by the experience of four of the named plaintiffs in these actions. The plaintiff Peter Galonek, aged 80, has been disabled since 1943. He lives in a convalescent home in Hartford and receives $174 per month in Social Security disability benefits. Until recently, he was cared for at home by a member of his family. In 1965, when he was still living at home, Galonek's wife became ill and was no longer able to look after him. Galonek then contacted his daughter, who at that time lived in Florida. He purportedly offered to eventually transfer his interest in the home to her, if she would return to Connecticut, care for him, and see to the maintenance and upkeep of the premises. The daughter did return to Connecticut, where for a period of approximately ten years she remained, paying property taxes, making repairs, seeing to Galonek's health, and generally fulfilling their agreement.

In October of 1974, Galonek transferred his one-half interest in the family residence to his daughter for the consideration of $5,000. His subsequent application for Title XIX (Medicaid) benefits was denied by the Connecticut Department of Social Services (DSS), on the grounds that the true value of his interest in the home was $11,843, not $5,000, and that the transfer was for less than "reasonable consideration."[7]

It would require several years for Galonek to "work off" this deficiency under the Department's standard cost-of-living formula,[8] and during this period of time he would remain ineligible for benefits.

Another plaintiff, Richard Bennett, age 86, receives $189 monthly in Social Security old age insurance benefits, which he applies toward $350 of monthly medical expenses.[9] In June of 1972, Bennett sold his family home, receiving proceeds of $34,000. Over the next three years Bennett's assets were frittered away in numerous small transactions, under circumstances which suggest that he was the victim of individuals who took advantage of his gullibility and reduced mental capacity to divest him of his holdings. It is uncontraverted that Bennett is presently without funds and no longer controls any of the assets in question. There is no allegation that he wilfully transferred assets in order to qualify for welfare. Yet, using a $405 monthly "cost-of-living" allowance, Bennett will remain ineligible for Medicaid for a period in excess of eight years.

Another plaintiff, Edith Huckle, lives with her four minor children in Torrington, Connecticut, having moved there from North Carolina in April, 1975. Shortly after her arrival in the state, Mrs. Huckle applied for and began receiving AFDC assistance. At that time she stated in her application that she owned no real property. Some time later, however, the DSS discovered that Mrs. Huckle did own certain property in Brooklyn, New York. Originally her father had held the property, but when he was diagnosed as having terminal cancer he transferred title to the plaintiff, for no consideration. The plaintiff explained, and has so stated in a sworn affidavit, that she was holding this property "in trust" for her mother, a manic-depressive, who it was feared might squander her assets in a moment of grandeur.

Although she explained these facts to the DSS, Mrs. Huckle was told that she must either transfer title to the Department or else remove herself from the AFDC rolls and live off the property. She refused to do this and in late 1975 reconveyed the property to her father, whose prognosis had since improved. About this time, the state terminated Mrs. Huckle's AFDC benefits. She reapplied early in 1976, but was told that her reconveyance to her father, for less than reasonable consideration, disqualified her application. A fair hearing proved unfavorable to the plaintiff, and she has filed an action in Connecticut Common Pleas Court which is currently pending.

Another plaintiff, Mary Buckner, lives in Ashford, Connecticut, with her two minor children. She was twice divorced while living in Colorado, once in 1973 and again in 1975. In each instance, Mrs. Buckner quit-claimed her interest in the family residence to her husband as a part of the marriage dissolution settlement. She stated in her welfare application that no actual value had been surrendered by her in either transfer, since both residences were fully mortgaged. Although she produced all documents in her possession, the DSS refused to authorize payments to Mrs. Buckner, because she failed to offer any "substantiating evidence" concerning the value of the property, other than a copy of the mortgage deed. Through its own efforts, the DSS was able to secure a letter from the husband's attorney in the first divorce proceeding. This letter satisfied the DSS as to the circumstances of the first transfer. The Department could not obtain the cooperation of the attorney in the second action, however, and thus the DSS has continued to list Mrs. Buckner's file as "pending" and has refused to voluntarily qualify her and make payments.

It is important to realize that in none of the pending cases does the DSS allege fraud. Thus, the state does not make any claim, that the transfers in question were made *for*

the purpose of qualifying for assistance.[10] The sole basis for the state's denial of benefits to these plaintiffs is that a transfer of property was made within seven years of the application without receipt of "fair value," or else that insufficient information was supplied by the applicant for the state to make a determination.

ISSUE

The issue presented is thus whether Connecticut's "transfer-of-assets" rule violates the Due Process, Equal Protection or Supremacy Clauses of the Constitution.

THRESHOLD QUESTIONS

The defendant has moved for dismissal on the grounds that the plaintiffs' constitutional claims are frivolous. For the court to concur, it would be necessary for it to find either that the plaintiffs' arguments are directly precluded by controlling authority, or else that they are so clearly insubstantial as to warrant no further consideration. *Goosby* v. *Osser*, 409 U.S. 512, 518 (1973).

The court finds that the present claims are not insubstantial by either of these tests. While most court rulings in the area have been made on Supremacy Clause grounds, the recent case of *Owens* v. *Roberts*, 377 F.Supp. 45 (M.D. Fla. 1974) (three-judge court), held squarely that a Florida statute, very similar to the statue here in question, raised an irrebuttable presumption in violation of due process. This holding does not, *a fortiori*, preclude a result in this case favorable to the defendant. However, it does demonstrate that the plaintiffs' constitutional arguments in this case are clearly not so insubstantial as to deprive this court of jurisdiction.[11]

The defendant contends that the statutory questions involved in this case may only be decided by a single-judge court, and not by the present three-judge panel. *Doe* v. *Westby*, 383 F.Supp. 1143 (D. S.Dak. 1974), *vac. and rem.*, 420 U.S. 968 (1975), *on remand* 402 F.Supp. 140 (1975); *Hagans* v. *Lavine*, 415 U.S. 528, 543-45 (1974); *Cordova* v. *Reed*, 521 F.2d 621 (2d Cir. 1975). While this is now the generally preferred practice, such an approach here, with a panel already chosen and the case heard, would produce unnecessary delay. Moreover, the policy basis for limiting the scope of questions to be reviewed by three-judge panels has been rendered less pressing by the passage last summer of legislation sharply limiting the use of three-judge courts on a prospective basis. Pub. L. No. 94-381, 90 Stat. 119 (Aug. 12, 1976). In light of these facts it seems unnecessary to remand on the statutory questions.

DISCUSSION OF THE LAW

Connecticut's "transfer-of-assets" rule, Conn. Gen. Stat. §§ 17-85 & 17-109(e), prevents Medicaid and AFDC applicants from receiving benefits if they have transferred assets within seven years of their application without receiving "reasonable consideration" in return. The plaintiffs cite a line of cases which stand for the proposition that a state may not, in administering federally sponsored welfare programs, either presume the availability of income or resources not actually available, nor add eligibility criteria not expressly authorized by Congress. *See, e.g.*, *Philbrook* v. *Glodgett*, 421 U.S. 707 (1975); *Van Lare* v. *Hurley*, 421 U.S. 338 (1975); *Burns* v. *Alcala*, 420 U.S. 575 (1975); *Shea* v. *Vialpando*, 416 U.S. 251 (1974); *Carleson* v. *Remillard*, 406 U.S. 598 (1972); *Townsend* v. *Swank*, 404 U.S. 282 (1971); *Lewis* v. *Martin*, 397 U.S. 552 (1970); *King* v. *Smith*, 392 U.S. 309 (1968); *Shook* v. *Lavine*, 374 N.Y.S.2d 187 (App. Div., 4th Dept., 1975); *Owens* v. *Roberts*, 377 F.Supp. 45 (M.D. Fla. 1974) (on

point); *Wilczynski* v. *Harder*, 323 F.Supp. 509 (D. Conn. 1971); *Solman* v. *Shapiro*, 300 F.Supp. 409 (D. Conn.), *aff'd per curiam*, 396 U.S. 5 (1969). Such presumptions and conditions conflict with federal law in violation of the Supremacy Clause.

Applying this line of cases to the Connecticut statutes, the plaintiffs argue that (1) if receipt of fair value in transfers of assets within seven years of application is viewed as a condition precedent to qualifying for assistance, the requirement must fail since it imposes a condition not expressly authorized by Congress in the SSA or its legislative history;[12] (2) if the statutes are viewed as an effort to define "income and resources" for eligibility purposes,[13] they violate the "available income rule" established in the above-cited cases. Thus by denying eligibility for assistance over a period of time during which a transferred asset would otherwise sustain the applicant, were it still available, the rule assumes the availability of unavailable resources, in clear contravention of the case law doctrine.

The state has argued that its present statutory rule is "reasonable." But the reasonableness of the rule is not in issue. Rather, the question is whether Connecticut's "transfer-of-assets" rule is inconsistent with federal law. This court finds that the Connecticut rule has the effect, if not the avowed intent, of presuming that transferred assets are still available to the transferor. In many cases, such as that of an elderly Medicaid applicant suffering from senility who has been cajoled out of his assets or actually defrauded, the presumption can be a cruel and irrational one. Furthermore, nothing in the SSA, nor in its regulations or legislative history, authorizes such a presumption; hence it violates the federal Supremacy Clause.

It may be pointed out once again that the state does not allege fraud in the pending cases. Were it to so argue, it

would be necessary to review the facts in light of *Lavine* v. *Milne*, 424 U.S. 577 (1976). The present posture of the cases before the court does not call for an analysis of this related question. It is sufficient to state that *Milne* does not affect the principal result here.

In policing fraud, a state may indisputably employ reasonable rules and regulations. Even toward this end, however, it may be argued that Connecticut's "transfer-of-assets" rule is unreasonable. Indeed, it seems to stand logic on its head. Under the present system, benefits are frequently denied to an elderly, impoverished, weak, ill or dependent senile class of individuals, once it has been determined that a prohibited property transfer has been made for less than "reasonable consideration."

The defendant's final argument is that, at least with respect to the plaintiffs, Mrs. Huckle and Mrs. Buckner, the Connecticut statutes neither add extra eligibility criteria nor assume the availability of unavailable resources. Instead, they merely require an applicant to provide "proof of eligibility" in order to receive benefits. It has been held that state authroities may deny welfare benefits to an applicant who refuses to cooperate in providing necessary information. *Wyman* v. *James*, 400 U.S. 309 (1971). Similarly, a state does not violate due process if it denies eligibility to an applicant who fails to discharge the burden of proof placed on him. *Lavine* v. *Milne*, *supra*. However, it does not follow that a state may impose unlimited burdens of proof upon welfare applicants, especially where an applicant has cooperated fully in good faith and is not in a position to do more. *Cf. Owens* v. *Roberts*, *supra*; *Doe* v. *Shapiro*, 302 F.Supp. 761, 764 (D. Conn. 1969); *app. dis.*, 396 U.S. 488, *reh. den.*, 397 U.S. 970 (1970). A state certainly may not predicate eligibility upon proof of a fact which is not germane under *King* and subsequent cases.

Mrs. Huckle submitted sworn affidavits from herself and her father relating to the circumstances under which she held property "in trust" for her mother in New York City. The defendant refused to accept the affidavits and demanded further documentary proof. The defendant does not allege that this action was fraudulent; thus the only purpose of requiring further proof of the disputed information would be to ascertain whether the property had been transferred for "reasonable consideration." Since this is not a permissible criterion upon which to deny eligibility, as hereinbefore determined, there can be no valid purpose for requiring this information. The principles relating to the Huckle case are therefore essentially no different in the last analysis than those of the Bennett and Galonek cases.

The plaintiff, Mrs. Huckle, has an action pending in the Connecticut Court of Common Pleas with respect to her denial of benefits, and this fact raises the question of equitable restraint. *Huffman* v. *Pursue*, 420 U.S. 592 (1975). However, this action has no criminal aspect similar to that in *Huffman* v. *Pursue*. *See id.* at 604. Thus it would be an appropriate instance in which to defer a decision, pending the completion of state action.

The case of Mrs. Buckner is superficially somewhat different from the others. If the facts are accepted as she asserts — that is, if the value of the property transferred by her in her second divorce proceeding was fully encumbered — then the Connecticut DSS concedes that she is eligible for assistance. This is presently being denied to her, the DSS states, because she has failed to provide sufficient information to determine whether or not the property was in fact totally encumbered or whether she owned equity therein at the time of the transfer. This argument is not tenable however, because even if the property were *not* so encumbered, the state would not be authorized under federal law to withhold

payments under the available resources rule. There is no evidence in the record, which would indicate that Mrs. Buckner has in any way refused good faith cooperation with Connecticut authorities in providing all necessary information concerning her ownership of any equity in said property.

Connecticut's "transfer-of-assets" rule violates the Supremacy Clause by presuming that assets are available to welfare recipients, which are in fact not available. The statutory rule and the information requirements relating to establishing whether or not "reasonable consideration" was received for a particular transfer of property are contrary to federal law standards and found by this court to be unlawful and unenforceable. An appropriate settlement order shall be submitted by the parties within ten (10) days.

The foregoing opinion shall constitute the findings of fact and conclusions of law required to be filed by the court, pursuant to Rule 52(a), Fed. R. Civ. P. SO ORDERED.

Dated at Hartford, Connecticut, this 10th day of December, 1976.

J. Joseph Smith
United States Circuit Judge

T. Emmet Clarie
Chief United States District Judge

M. Joseph Blumenfeld
United States District Judge

FOOTNOTES

[1]Three actions have been consolidated for this hearing: *Porta* v. *White* (now *Porta* v. *Maher*), Civ. No. 15,068 (filed May 30, 1972); *Buckner* v. *Maher*, H-75-411 (filed Dec. 30, 1975); and *Huckle* v. *Maher*, H-76-190 (filed May 5, 1976). Luigi Porta, the original plaintiff in the first action, is no longer living. Furthermore, of eight intervenors in that action besides Porta, only four are presently alive. Of these, the cases of Richard Bennett and Peter Galonek were fully briefed and argued before the Court. The cases of plaintiff-intervenors Susan McFalls and Harold Gilbert, who are also still living, are essentially similar to that of plaintiff Galonek. Therefore, the specific circumstances surrounding their applications for assistance need not be probed in detail.

It has been called to the attention of the court that during a period of approximately four months in late 1974 there were no living plaintiffs in the *Porta* case. At that time Porta himself and four plaintiff-intervenors had died, and the four present plaintiffs had not yet intervened. The defendant raised no objection to the subsequent intervention of the four present plaintiffs, however, and argued the matter only briefly before the three-judge court convened in June of 1976, after the plaintiffs first raised the question.

The court finds that the hiatus between July and November of 1974 in which there was no living plaintiff does not require dismissal of the *Porta* case. A motion for class certification in *Porta* was filed in September, 1972. By agreement of counsel no action was taken on that motion — or on the case in general — pending the Connecticut Supreme Court's decision in the case of *Morgan* v. *White*, which was not handed down until April 15, 1975. *See generally* note 6 *infra*. The United States Supreme Court has provided for retroactive class certification in an appropriate case — in particular, where a case becomes moot "before the district court can reasonably be expected to rule on a certification motion" — provided that a "live controversy" persists throughout the period of time involved. *Sosna* v. *Iowa*, 419 U.S. 393, 402 n.11 (1975). This case is found to be an appropriate one for such retroactive certification, and thus the principles in the *Porta* case shall be decided here along with *Huckle* and *Buckner*.

[2]The court does not have jurisdiction under 28 U.S.C. § 1343(3) to hear a statutory challenge under the Social Security Act, since that statute is not an "Act of Congress providing for equal rights of citizens. . . ." Once a substantial fourteenth amendment claim has been stated, however, § 1343 jurisdiction thereafter exists, and the court may take up statutory claims on the theory of pendent jurisdiction.

[3]Under the SSA, 42 U.S.C. § 1396a(a)(10), participating states are required to make medical assistance available to "all individuals" receiving federally sponsored welfare assistance. These individuals are referred to as "categorically needy." In addition, states may at their option provide medical assistance for individuals whose income or resources exceed the level allowed for categorical assistance, but who fall within minimum assistance levels once large medical costs are taken into account. These individuals are referred to as "medically needy." Connecticut provides benefits for the medically needy. See *Wilscynski* v. *Harder*, 323 F.Supp. 509, 514-15 (D. Conn. 1971).

[4]*See* 42 U.S.C. §§ 601, 602(a)(10), and 606 (a).

[5]42 U.S.C. § 1396a(a)(17)(A)-(B), for instance, limit the states' prerogatives in evaluating income and resources for Medicaid purposes.

[6]Connecticut Department of Social Services, Public Assistance Manual, Vol. I, Ch. III, Index 326(A) at 1; *id.* Index 326.1.

[7]The DSS will not recognize the daughter's services as valid consideration. Section 326 of the DSS Public Assistance Manual narrows the acceptable forms of consideration to four: cash; mortgage notes; support (provided either in cash or kind, subsequent to the date of transfer); and payment of a valid loan or other debt secured by a note or deed. In *Morgan* v. *White*, _____ Conn. _____, Conn. L.J. Vol. XXXVI, No. 42 at 6 (April 15, 1975), it was held that the foregoing list is too restrictive; in that case, the court recognized an oral contract as valid consideration for a transfer. Here, the DSS concluded that no oral contract as defined under *White* existed.

[8]The "Cost of Living Scale" is a schedule which establishes for administrative purposes the amount needed by an individual to sustain a "reasonable standard of health and decency" on a monthly basis. In the case of an individual who has transferred an asset for less than "reasonable consideration," the Cost of Living Scale is used to determine the length of time benefits will be denied. To use a simple example, suppose an applicant for welfare has transferred away an asset within seven years of his application with a market value of $1500. Suppose also that he received $500 in return. If the individual's cost-of-living allowance as established by the DSS scale is $200 per month, then benefits would be denied for five months: the net shortfall in the transfer is $1000, which at $200 per month requires five months to extinguish.

[9]The plaintiff Bennett is "medically needy." *See* note 3 *supra*.

[10]The Connecticut statutes being challenged both refer to transfers "without reasonable consideration *or* for the purpose of qualifying for an award." (Emphasis supplied.) Only the first of these two grounds for disqualification is involved here.

[11]In *Weinberger* v. *Salfi*, 422 U.S. 749 (1975) (Rehnquist, J.), the Court cast doubt on the validity of the doctrine of irrebuttable presumption. Subsequently, however, the Court has seemed to retreat from this view. *See, esp., Lavine* v. *Milne*, 424 U.S. 577, 584 n.9 (1976).

[12]With respect to the regulations, the HEW and its predecessor, the Social Security Board, have consistently interpreted the term "resources" as including only resources which are *actually available*. 45 C.F.R. § 233.20(a)(3)(ii) (D) (AFDC); 45 C.F.R. § 248.3(b)(i) (Medicaid). Such an interpretation of statutory language by the responsible federal agency is entitled to substantial weight where ambiguity exists in the statute. *Shea* v. *Vialpando*, 416 U.S. 251, 262 n.11 (1974); *Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. 367 (1969); *Udall* v. *Tallman*, 380 U.S. 1 (1965). *See also* 42 U.S.C. §§ 1396a(a)(17)(A)-(B).

[13]See 42 U.S.C. § 602(a)(7) (AFDC); id. § 1396a(a)(10)(C)(i) (Medicaid).

APPENDIX B

United States District Court
District of Connecticut

MARY BUCKNER, et als.
Plaintiffs,

v.

EDWARD MAHER, Commissioner of Social Services, et als.
Defendants.

Civil No. H75-411

EDITH M. HUCKLE, a/k/a et als.
Plaintiffs,

v.

EDWARD MAHER, Commissioner of Social Services
Defendants.

Civil No. H76-190

LUIGI PORTA, et als.
Plaintiffs,

v.

EDWARD MAHER, Commissioner of Social Services
Defendants.

Civil No. 15,068

SUMMARY JUDGMENT AND ORDER

This cause having come on for consideration on plaintiffs' Motion for Summary Judgment and the Court having rendered its Memorandum of Decision on said Motion under date of December 10, 1976, granting said Motion,

It is hereby ORDERED and ADJUDGED as follows:

1. This action shall be maintained as a class action under Fed. R. Civ. P. § 23(b)(2);

2. Judgment be and is hereby entered in favor of the plaintiffs declaring that § 17-85 and § 17-109, General Statutes of Connecticut, are unlawful and unenforceable because they are contrary to federal law (i.e., 42 U.S.C. § 602(a)(7) and 42 U.S.C. § 1396(a)(10)) insofar as said Statutes require that applicants and/or recipients of AFDC public assistance or Title XIX Medical Benefits shall be ineligible for such benefits if a transfer of assets was made within seven years prior of date of application without receiving, in exchange therefor, reasonable consideration. Said Statutes therefore violate the Supremacy Clause by presuming that assets are available to AFDC public assistance and Title XIX Medicaid applicants and/or recipients which are in fact not available.

3. Defendants, their agents and employees, are hereby enjoined from requiring as a condition of eligibility for the Aid to Families with Dependent Children Program (AFDC) or the Title XIX Medical Assistance Program (Medicaid) that an applicant or recipient who has made a transfer of assets within seven years from the date of application for said

programs must have received, in exchange therefor, reasonable consideration for such a transfer of assets.

Dated at Hartford, Connecticut, this 17th day of ——— ———, 19—.

SYLVESTER J. MARKOWSKI
Clerk,
United States District Court

By: .....

Approved:

J. JOSEPH SMITH
United States Circuit Judge

T. EMMET CLARIE
Chief United States District Judge

M. JOSEPH BLUMENFELD
United States District Judge

APPENDIX C

United States District Court
District of Connecticut

MARY BUCKNER, et als.
Plaintiffs,

v.

EDWARD MAHER, Commissioner of Social Services, et als.
Defendants.

Civil No. H75-411

EDITH M. HUCKLE, a/k/a et als.
Plaintiffs,

v.

EDWARD MAHER, Commissioner of Social Services
Defendant.

Civil No. H76-190

LUIGI PORTA, et als.
Plaintiffs,

v.

EDWARD MAHER, Commissioner of Social Services
Defendant.

Civil No. 15,068

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Edward Maher, Commissioner of Social Services of the State of Connecticut, the defendant

above named hereby appeals to the Supreme Court of the United States from the permanent injunction enjoining the defendant from further enforcing Section 17-85 and Section 17-109, General Statutes of Connecticut, Revision of 1958, as amended, insofar as said Statutes require that applicants and/or recipients of AFDC public assistance or Title XIX medical benefits shall be ineligible for such benefits if a transfer of assets was made within seven years prior to the date of application without receiving, in exchange therefor, reasonable consideration, entered in this action on the 17th day of January, 1977.

This appeal is taken pursuant to 28 U.S.C. § 1253.

EDMUND C. WALSH
Assistant Attorney General

PAIGE EVERIN
Assistant Attorney General

90 Brainard Road
Hartford, Connecticut 06114

Attorneys for the Defendant

APPENDIX D

HUMANE AND REFORMATORY AGENCIES AND INSTITUTIONS

Title 17

Sec. 17-85. Eligibility. Any relative having a dependent child or dependent children, who is unable to furnish suitable support therefor in his own home, shall be eligible to apply for and receive the aid authorized by this part, for such dependent child or children, and to meet such relative's own needs, if such applicant has not made, within seven years prior to the date of such application for aid, an assignment or transfer or other disposition of property without reasonable consideration or for the purpose of qualifying for an award if such relative is to be supported wholly or in part under the provisions of this part; provided ineligibility because of such disposition shall continue only for that period of time from the date of disposition over which the fair value of such property, together with all other income and resources, would furnish support on a reasonable standard of health and decency; and provided no needy dependent child shall be deemed ineligible for assistance by reason of any such transfer or other disposition of property by a relative not legally liable for the support of such child. Each such dependent child shall be supported in a home in this state, suitable for his upbringing, which such relative maintains as his own; provided aid shall not be granted to more than one such relative for support of children of the same parentage, unless the two relatives comprise a married couple residing together, it being the intent hereof not to separate brothers and sisters among several relatives. Aid shall not be denied any such dependent

child on the ground that such relative is not a citizen of this state or of the United States.

(1949 Rev., S. 2894; 1949, 1951, 1953, S. 1622d; 1957, P.A. 34, S. 2; 58, S. 2; 1959, P.A. 633; 1961, P.A. 383, S. 1; 1963, P.A. 69, S. 1; 1967, P.A. 734, S. 2; 1969, P.A. 730, S. 6; P.A. 73-39, S. 1.)

See Secs. 17-2c, 17-82.

Cited. 152C. 58.

Cited. 5 Conn. Cir. Ct. 293. Secs. 17-85—17-105 cited. 5 Conn. Cir. Ct. 292.

PART III°

ASSISTANCE FOR THE AGED, THE BLIND AND THE TOTALLY DISABLED

Sec. 17-109. Eligibility. Any person shall be eligible for an old age assistance award who (a) has attained the age of sixty-five years; (b) has not sufficient means to support himself on a reasonable standard of health and decency, and has no spouse or legally liable relative able so to support him; (c) is a resident of Connecticut; (d) is not an inmate of a public institution, unless he is a patient in a medical institution, an institution for mental diseases, or an institution for tuberculosis; (e) has not made, within seven years prior to the date of application for such aid, an assignment or transfer or other disposition of property without reasonable consideration or for the purpose of qualifying for an award; provided ineligibility because of such disposition shall continue only for that period of time from date of disposition over which the fair value of such property, together with all other income and resources, would furnish support on a reasonable standard of health and decency; (f) is not serving a sentence in a correctional institution, or lodged in a community correctional center while bound over from a lower court for trial.

(1949 Rev., S. 2856; 1949, 1951, 1953. S. 1601d; 1957. P.A. 193; 1959. P.A. 627; 1961. P.A. 134; 383, S. 2; 1963. P.A. 69.

S. 2; 1967. P.A. 302; 1972. P.A. 61; June 1972, P.A. 1. S. 13; P.A. 73-59. S. 2.)

Mother who relinquished life interest in property to sons in return for their agreement to support her "until she dies" held ineligible for old assistance. 4 Conn. Cir. Ct. 338-343. Cited. 6 Conn. Cir. Ct. 354.

APPENDIX E

EXCERPT FROM TRANSCRIPT OF ORAL ARGUMENT

JUNE 21, 1976

MR. WALSH: The gist of our claim is this —

JUDGE BLUMENFELD: What?

MR. WALSH: The gist of our claim is this: The Congress could never have intended, when it enacted the Social Security Act, to mean that a person could give away his assets.

JUDGE BLUMENFELD: Who said so?

MR. WALSH: This is my claim.

JUDGE BLUMENFELD: Is there anything in the congressional enactment that says that?

MR. WALSH: Well, your Honor, it is a question of statutory construction that we are involved with here.

I can tell you this: The Secretary of HEW, as the person administering the congressional act, his interpretation is entitled to great weight.

Now, there is a federal regulation, 45 CFR, Section 233.20(a)(3), which says — which places limitations, in addition to the home and personal effects, automobile and income producing property allowed by the agency, the amount of real or personal property, including liquid assets that can be reserved, shall not be in excess of $2,000.

Therefore, HEW says you cannot have more than $2,000 and be eligible for welfare.

JUDGE BLUMENFELD: What has that got to do with disposing of assets up to $2,000?

MR. WALSH: Well, $2,000 is a federal requirement. That is the maximum. The State requirement is $250, plus $600 burial fee.

JUDGE BLUMENFELD: All right. You say if they got $250 they can still qualify; but, with everything over that, can't they give that away?

MR. WALSH: They cannot give it away, your Honor, because if they give it away it renders this regulation absolutely meaningless.

JUDGE BLUMENFELD: What regulation, the State?

MR. WALSH: No, the federal regulation, which I have just discussed, 45 CFR. It places a $2,000 maximum limitation on assets in order to be eligible for welfare.

If you can just give away your $2,000, or whatever amount, and then immediately become eligible, that makes the federal regulation a meaningless one. It simply is circumventing, by giving away your property. And in fact what it results in, if you are eligible for public assistance, that applicant has made a gift at the expense of the public funds, and the gift is being subsidized by public funds. That is what it comes down to.

JUDGE BLUMENFELD: It is only your law; there isn't anything in the federal law that says you can't make a gift?

MR. WALSH: We believe it is a fair interpretation, and the only interpretation, your Honor, that can be placed on the federal statute, when you consider the four corners of the document — not simply on one section about availability.

And the Wisconsin court said, in the Lerner case, that it can never have been the intention of Congress that a person can give away his property and qualify for public assistance, because the entire fiscal integrity of the program will collapse in no time at all.

JUDGE BLUMENFELD: You mean one of the things in our society is that you cannot put yourself in the position where you are going to be poor?

MR. WALSH: Deliberately. Because you are making a gift at the expense of public funds.

Well, if I may just treat briefly, your Honor, with the statute. What I want to say about Section 17-85 — and it applies to 17-109(e),

• • •

APPENDIX F

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
PUBLIC ASSISTANCE
HARTFORD

In Re: Request of Peter Galonek
107 McKee Street
East Hartford, Conn.

For fair hearing because of denial of Title XIX.

Aprin 20, 1976

Present: Mr. Peter Galonek, Appellant;
Mrs. Jane Jaskulski, Appellant's Daughter;
Attorney David Shaw, Appellant's Representative;
Miss Ann Mattioli, Fair Hearing Liaison;
William Kane, Fair Hearing Officer

MEMORANDUM OF DECISION

Mr. Galonek, of East Hartford, Connecticut, also referred to as the appellant, was aggrieved because of denial of Title XIX due to transfer of assets without receipt of fair value and made request for a fair hearing as outlined in Sections 17-2a and 17-2b of Connecticut General Statutes by means of a letter dated 3-1-76.

Pursuant to said request, a fair hearing was held before the undersigned, at St. Francis Hospital, on 3-23-76, of which due notice had been given and at which hearing the appellant was present and the case was fully heard. The right to appeal the hearing decision within thirty days to the Court of Common Pleas was made known.

A. FOR THE DEPARTMENT OF SOCIAL SERVICES

The appellant applied for Title XIX on 10-28-75 and the application was denied on 1-29-76 due to transfer of property without receipt of fair market value.

The appellant sold his property on 10-25-74 to his daughter for $5000. On 11-18-75 a referral was made to the Resource Section and on 1-15-76 the reply was received that the property was valued at $23,687 as of the date of sale. The appellant at the time was one-half owner making his share $11,843.00. Since the appellant only received $5000 it was determined that fair market value was not received.

B. FOR THE APPELLANT

The appellant's representative argued that the denial of assistance should have included all the grounds for denial, and that this hearing should be able to resolve whether or not the appellant is eligible and should not have to remanded back to the district for further review and possible denial for other reasons not already stated.

The appellant's daughter testified that in 1965 she gave up her job and home in Florida and came to live in her parents home at their request because they were unable to care for the home. The appellant had been disabled since 1943 and his wife cared for him until she was no longer able to do so. At that time she was told the home would be given to her in return for this care. In addition the daughter would have to make all home repairs as the parents had only social security for income and would not be able to pay for repairs or upkeep. The appellant's wife died in *1974* and then she cared for the appellant until it was necessary to place him in a convalescent home.

The appellant's daughter put in $1000 worth of carpeting, replaced the roof for $500 (approx.). Also the rooms were panelled for $1000 with the daughter doing all the labor. A gas heater was purchased for $250 and also has paid all the taxes since 1965. The home needed painting of the trim twice and the garage needed $500 in repairs due to termites. Most of the utilities were paid for by the appellant's daughter. The daughter stated that the parents had to use this Social Security payments to meet high medical bills not covered by insurance. Since 1974 the appellant's only income has been $174 in Social Security.

In 1974 the home was transferred to the appellant's daughter. This was not done for the $5000. The $5000 was an additional payment the daughter made in order to give the appellant a trip to Poland. Because of health he did not make the trip but used it for grave monuments for his parents and also to help relatives in Poland.

The appellant's daughter always planned to care for the appellant until his death and she will take him home if his health will permit it rather than convalescent home care.

The appellant's representative submitted a letter from the appellant's physician that noted that the appellant's daughter had provided care for the past 10 years due to the ill health of the appellant and his wife.

The appellant's reprsentative argued that based on *Morgan* v. *White* the appellant's daughter would be given credit for the care given in the past ten years and also all the expenses of the home that were met by the appellant's daughter during the period prior to the actual transfer.

C. PERTINENT STATE STATUTE

Section 17-134a of the General Statutes provides the regulation that authorizes the Commissioner of Social Services to

administer the Title XIX program taking advantage of existing public assistance policy where it is not inconsistent with federal regulations.

Section 17-110 of the General Statutes provides the regulation that authorizes the Commissioner of Social Services to grant assistance to those persons who are 65 years of age or over and are in financial or medical need.

D. PERTINENT AGENCY POLICY

Volume I, Chapter III, Index 326 provides the policy relative to treatments of applications where there has been a transfer or sale of property within 7 years of the date of application.

Volume III, Chapter D-2, Index 244.11 provides the policy relating to treatment as assets on applications for medical assistance.

E. FINDING OF FACT

1. The appellant transferred his property to his daughter in 10-74.

2. The property was valued at $23,687 and the appellant's share was $11,843.00.

3. The appellant applied for Title XIX in 10-75 and the application was denied on 1-29-76 due to transfer of assets without receipt of fair value.

4. The appellant received $5000 from his daughter at the time of transfer.

5. The appellant's daughter sold her home in Florida and quit her job in 1965 to come and care for the appellant and his wife at the request of the appellant.

6. The appellant has been unable to work since 1943 and that his main source of income since 1965 has been Social Security.

7. The appellant's daughter has assumed responsibility for all repairs to the property, taxes and other expenses of operating a home and most of the utility bills since moving into the home in 1965.

8. The appellant's Social Security income was used to meet the medical expenses not covered by Medicare and other basic need expenses.

F. CONCLUSION

The appellant had not satisfactorily explained the transfer of property or the disposition of the funds which would equal the fair market value of his share of the property.

G. DECISION

The district is upheld in the denial of Title XIX on 1-29-76.

WILLIAM KANE
Official designated to hold fair hearing

WK:mm
cc: NORMAND HEBERT
District Director
D.O. No. 1 — Hartford

ATTORNEY DAVID SHAW

APPENDIX G

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
PUBLIC ASSISTANCE
HARTFORD

In Re: Request of Mr. Richard Bennett
Brookside Home
4 Franklin Street Ext.
Danbury, Connecticut

For fair hearing because of denial of assistance.

November 21, 1975

Present: Mrs. P. Shea, Fair Hearing Officer; Mrs. Lisa Abbamonte, Fair Hearing Liaison; Mr. Richard Bennett, Appellant; Mr. Harry Bennett, Nephew; Mrs. Arlene Moke, duly authorized Representative from Fairfield County Legal Services.

MEMORANDUM OF DECISION

Mr. Richard Bennett, of Danbury, Connecticut, also referred to as the appellant, was aggrieved because of denial of Title XIX and Old Age Assistance and made request for a fair hearing as outlined in Sections 17-2a and 17-2b of Connecticut General Statutes by means of a letter dated September 26, 1975.

Pursuant to said request, a fair hearing was scheduled for October 14, 1975, and postponed at request. A fair hearing was held before the undersigned at the Brookside Home, 4 Franklin Street Ext., Danbury, Connecticut on November 5, 1975 of which due notice had been given and at which hearing the appellant was present and the case was fully heard.

The right to appeal the hearing decision within thirty days to the Court of Common Pleas was made known.

A. FOR THE DEPARTMENT OF SOCIAL SERVICES

The appellant applied for Title XIX and Old Age Assistance on June 5, 1975, and both applications were denied on September 2, 1975 by reason of "improper disposal of assets."

On August 22, 1975 a referral was sent to Resources requesting clearance of a property transfer in 1972. The answer showed that the appellant sold a home on July 20, 1972, for $37,500, receiving net payment of $34,850.

$34,850	received from closing 7-72
5,797	average Social Security income from 7-72 to 6-75 (35 months)
40,647	Total
— 14,175	Cost of living expense allowed at $405 per month for 35 months
— 259	paid to Brookside Home for one month
$26,033	Remainder

There was, then, $26,033 which there was no accounting, and the appellant was found ineligible for assistance.

Copies of the Resource referral and reply, the closing statement, and the denial authorizations were submitted with the summary.

B. FOR THE APPELLANT

The nephew explained that no questions were asked about assets until very near the end of the initial interview, when he mentioned there was a bank account. He brought the bank book in for review by Intake and this apparently precipitated the investigation in past financial activity.

The representative explained that the appellant was a very independent person who had always managed his own affairs until recently. None of his relatives had been closely involved with him, and so they are unable to say how he disposed of his property.

Testimony was given that after selling his home he had gone to live with the Scott family in Ridgefield. He had known them for 30 years and enjoyed their company. From there he moved around among other friends, until November, 1974, when he moved into a motel. In June 1975 the motel owner called the nephew to report that the appellant had no more money. The nephew secured placement for him in Brookside, and has been trying to reconstruct his past financial actions since then.

The representative submitted statements from various people with whom the appellant had stayed, plus a statement from his doctor and one from his niece regarding past medical bills. The representative said the additional notes on these statements contained information she had secured by talking with people after receiving their letters.

The appellant was questioned about two entries in his savings passbook. He could not remember how he had obtained a $3,000 check which was shown as deposited on December 3, 1973. He thought the $3,000 withdrawal the following March 29th might have been to cover the $2,800 he had loaned one of the Scotts about that time. He recalled having bought a couple of cars for a Mrs. Seaman as well. He said he never asked these people outright to repay, but had always thought they would be good enough to do so.

The representative noted that one letter she had from Harold Scott and his wife had said the purchase of a car for them for "less than $3,000" had been in repayment for services they had given the appellant. She felt that any of the people

to whom he gave money would make this claim or else insist the money was a gift and not a loan.

The appellant always paid cash for everything, and apparently never kept receipts. The representative argued that he was his own master during the years, and undoubtedly thought he had or would receive value for his disbursements. She pointed out that he is 86, in poor health now, and totally without means to support himself in full. In view of the situation now plus the appearance that he had been imposed upon in the past by some of his acquaintances he should be found eligible for assistance.

It was agreed to hold the decision open for two weeks in hopes of obtaining additional information about the appellant's past financial activity. No additional data was received.

C. PERTINENT STATE LAW

Section 17-134e of the Connecticut General Statutes extends provisions of Public Assistance law to the Title XIX Program.

Section 17-109 sets forth the eligibility requirements for Old Age assistance.

D. PERTINENT DEPARTMENT POLICY

Manual Volume I, Chapter III, Index No. 326.A discusses property transfers that require examination and notes that among the ways transfer can be accomplished is by granting loans without security or record.

Index no. 326.1 outlines methods of determining whether or not fair value has been received. Index no. 326.2 states that if fair value cannot be demonstrated there is ineligibility.

Manual Volume 3, Supplement D-Z, no. D-244.11 repeats the provisions of ineligibility when face value has not been received in the Title XIX Program.

E. FINDING OF FACT

1. The appellant applied for Old Age Assistance and Title XIX on June 5, 1975.

2. His applications were denied on September 2, 1975 by reason of "improper disposal of assets."

3. In July, 1972 the appellant received $34,850 from the sale of his home.

4. From that time until his admission to Brookside Home he resided for the most part with acquaintances to whom he made payment for room and board.

5. He was hospitalized three times from 1973 through 1974, but there are no medical bills owing for these times.

6. No information was available as to the amounts the hospital charged; the doctor's fees are known.

7. From July 1972 to June 1975 the appellant's income from social security was estimated to have totaled $5,797, giving total assets of $40,647 at his disposal.

8. During that same period the standard cost-of-living scale of $405 per month gives a total need of $14,175. Addition of $259 paid to Brookside in June increases the need to $14,434.

9. The Department found no accounting for $26,033.

10. The appellant has been unable to account for the disbursements of his funds in any precise manner.

11. It is known that from November 1974 to June 1975 the appellant paid for room and board at the rate of $142.00 per week in a motel.

12. The appellant testified he gave cars to some of the people with whom he lived and on occasion loaned them money, but there are no notes for these transactions.

F. CONCLUSION

It seems fairly certain that there is no way of telling precisely what happened to all the appellant's money. It is clear, in examining the bank book that was opened in September, 1973, that as of November, 1973, his withdrawals increased substantially. The following chronology was noted:

9-73	$ 200	withdrawn	7-74	$ 200.	withdrawn
10-73	200	withdrawn	9-74	550.	withdrawn
11-73	600	withdrawn	11-74	3,011.88	withdrawn
12-73	3,000	deposited	12-74	3,192.15	withdrawn
	900	withdrawn	1-75	1,262.00	withdrawn
1-74	950	withdrawn	2-75	2,051.96	withdrawn
2-74	200	withdrawn	3-75	1,526.00	withdrawn
3-74	3,200	withdrawn	4-75	1,718.00	withdrawn
4-74	200	withdrawn	5-75	1,200.00	withdrawn
5-74	1,200	withdrawn	6-75	300.	withdrawn

The largest consistent withdrawals occur after he moved into the motel. The cost of $142.30 per week for room and board then only comes to $569.20 per month, and does not indicate why he should need to withdraw $3,000, $2,000, or $1,000 during those months.

It is very possible that the appellant was imposed upon by his acquaintances. There are no provisions in policy, however, for making exceptions in cases of this matter. The amount that cannot be accounted for can be reduced slightly

by deducting the doctor's fees as shown in evidence ($735.00), and by $1,149.20, which is the excess over the cost-of-living scale which was paid to the motel. These amounts are not significant enough to make a difference.

There appears to be no way the appellant can be found eligible at this point in time, due to his transferring property without receipt of fair value.

G. DECISION

The district office is upheld.

PRISCILLA SHEA
Official designated to hold fair hearing

PS/bs
cc: T. Connell
Act. D. Director
D.O. #3 — Bridgeport

Attorney Arlene Moke

APPENDIX H

Connecticut State Welfare Department
Social Service Policies — Public Assistance

Manual Vol. 1 — Chapter III

NEED REQUIREMENTS AND ASSISTANCE PAYMENTS

Property Transfer — All Programs

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326 *Property Transfer*

A. *Prior to Application*

The determination of eligibility will include an examination of the past and present property holdings of the applicant and of any family member whose needs are to be included in the assistance plan, to determine that resources have not been disposed of *within seven years* prior to the date of such application for Public Assistance for the purpose of qualifying for assistance or without the receipt of *fair* value.

However, a needy, dependent child will not be found ineligible for assistance because of the transfer or other disposition of property made by a non-legally liable relative who applies as supervising relative.

Reference: Section 17-85 and Section 17-109, of the General Statutes.

The following are the more usual means by which property may have been transferred:

1. Deeding real estate to relatives, friends, or institutions

2. Sale or other disposition of "Life use" of real estate

3. Granting a mortgage on real estate

4. Placing real estate "in survivorship" (a provision in the deed whereby the owner's interest ceases at death and automatically goes to the survivor)

5. Sale of real estate or other property at a price below fair market value

6. Transfer of bank account or securities to another person

7. Granting a loan without security or record

8. Paying off a loan or debt of which there is no record

9. Cash surrender of assignment of life insurance

10. Prepaid funeral.

Property Transfer (Continued)

Any disposal of property, made within seven years prior to the date of applicaton for Public Assistance, either real or personal, mut be examined to determine:

1. Type and value of property transferred

2. Date of transfer

3. Person(s) to whom transfer was made

4. Reason for the transfer

5. Consideration received

B. *While in Receipt of Assistance*

A beneficiary who receives title to any money or other property while in receipt of assistance will notify the worker of this no later than fifteen days after the receipt thereof, and will not dispose of this, or any other resource, without prior consultation with the worker.

Reference: Section 17-82j, 1971 Supplement to the General Statutes.

Failure on the part of the beneficiary to fulfill this obligation is examined to determine the reason and the action necessary. See Index No. 385-386, page 4.

Revised 10-17-73
Effective 10-1-73

NEED REQUIREMENTS AND THE ASSISTANCE PAYMENTS

Property Transfer — All Programs

326.1 *Fair Value Received — Applications*

When an applicant has transferred property to another owner, eligibility may be found if facts relating to the transfer can be substantiated, showing that fair value or reasonable consideration was received.

Fair value is considered to have been received when it is found to be equivalent to the appraised or market value of the property in question, minus recorded encumbrances.

The more usual forms in which fair value is received are:

1. Cash
2. Mortgage note
3. Support, provided either in cash or in kind, subsequent to date of transfer
4. Receipt for payment of a valid loan or other debt secured by note or deed

Support

When fair value has been received in the form of support, the value of such support shall be computed in accordance with the Department's Cost of Living Scale for Legally Liable Relations. (See Index 346.1.) Such support is computed from the date of transfer and other income and resources available are taken into consideration.

Payments of Debts

When the applicant has transferred property to repay a loan or to clear off a debt, consideration can be given to the receipt of fair value when the indebtedness is substantiated by a cancelled note or a receipted bill which is clearly authentic.

Revised 4-18-63
Effective 5-1-63

Transmitted by Departmental Bulletin No. 1248, WSS#477

Connecticut State Welfare Department
Social Service Policies — Public Assistance

Manual Vol. 1 — Chapter III

NEED REQUIREMENTS AND THE ASSISTANCE PAYMENTS

Property Transfer — All Programs

326.2 *Fair Value Not Received — Applications*

A person who has transferred or otherwise disposed of property within seven years prior to the date of application for Public Assistance without receipt of fair value or for the purpose of qualifying for an award, may be found eligible if the property in question is *reconveyed to his ownership*. When this is not possible, ineligibility will exist for that *period* of time from date of disposition over which the *fair value* of such property would furnish support based on the Department's *Cost of Living Scale*. See Index No. 344.2.

Revised 10-17-73
Effective 10-1-73

APPENDIX I

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
PUBLIC ASSISTANCE
HARTFORD

In Re: Request of Edith Huckle
119-D Sunny Lane
Torrington, Conn.
Case No. 143-C-379428

For fair hearing because of discontinuance.

January 9, 1976

Present: Mrs. Edith Huckle — Appellant
Mr. Henry Boyle — Investigator
Mrs. Barbara Hale — Fair Hearing Officer

MEMORANDUM OF DECISION

Mrs. Edith Huckle, of Torrington, Connecticut, also referred to as the appellant, was aggrieved because of the discontinuance of her AFDC award and made request for a fair hearing as outlined in Sections 17-2a and 17-2b of Connecticut General Statutes by means of a letter dated 11-21-75.

Pursuant to said request, a fair hearing was held before the undersigned, at the Torrington District Office of the State Department of Social Services, on 12-9-75, of which due notice had been given and at which hearing the appellant was present and the case was fully heard. The right to appeal the hearing decision within thirty days to the Court of Common Pleas was made known.

A. FOR THE DEPARTMENT

The appellant's AFDC case was discontinued effective 11-15-75 because she owned out of state property which she transferred without receipt of fair value. She had been receiving AFDC since her application on 4-29-75 at which time she did not declare that she was the owner of a two-family house in Brooklyn, N.Y. In October 1975 when the Department learned about the property, the appellant was interviewed. In the interview on 10-24-75 she was told she must quit claim the property to the State, which she refused to do. Instead, she conveyed the property to her father after the interview.

B. FOR THE APPELLANT

She did not feel the property was ever hers even though her name was on the deed. Her father transferred the property to her in 1971 when he learned he had cancer, because he wanted her to preserve the apartment for his wife in case of his death. He and his wife no longer live in the apartment building but he is not willing to re-convey the property to her. She would not in any case allow the Department to place a lien on the property.

C. PERTINENT STATE LAW

Section 17-85 of the Connecticut General Statutes provides the legal basis for determining eligibility for Aid to Families with Dependent Children of persons owning or transferring real property. Section 17-82j deals with the disposition of property while in receipt of assistance.

D. PERTINENT DEPARTMENT POLICY

Manual Volume 1, Chapter III, Index number 310.14 requires the AFDC applicant or recipient to quit claim out-of-state property to the Department.

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E. FINDING OF FACT

1. The appellant had been receiving AFDC since her application on 4-29-75.

2. The Department discontinued her assistance effective 11-15-75 because she transferred out-of-state property, which she owned, to her father without the receipt of fair value.

3. Her father transferred a two-family apartment house in Brooklyn, N.Y. to her in 1971.

4. She refused to quit claim the property to the State prior to the transfer back to her father.

F. CONCLUSION

The Department correctly gave the appellant her options in order to continue receiving assistance.

G. DECISION

The district is upheld.

MRS. BARBARA HALE
Official designated to hold
Fair Hearing

BH:lc

cc: LEO BRESNAHAN
District Director
D.O. No. 6 — Waterbury

APPENDIX J

SUPREME COURT

November Term, 1976

IDA HANSEN v. NICHOLAS NORTON, COMMISSIONER, CONNECTICUT STATE WELFARE DEPARTMENT

House, C. J., Loiselle, Bogdanski, Longo and Barber, Js.

Argued November 9, 1976 — decision released January 25, 1977

Action to vacate and set aside a ruling of the defendant denying the plaintiff's application for medical assistance, brought to the Court of Common Pleas, geographical area No. 12, and tried to the court, *Mancini, J.*; judgment for the plaintiff and appeal by the defendant. *Error; judgment directed.*

Edward F. Pasiecznik, assistant attorney general, with whom, on the brief, was *Carl R. Ajello*, attorney general, for the appellant (defendant).

Peter J. Alter, for the appellee (plaintiff).

BARBER, J. The Court of Common Pleas sustained an appeal from a decision of the welfare commissioner holding that the plaintiff was ineligible for assistance from the state for her medical expenses, and the defendant has appealed to this court from the judgment rendered.

On April 5, 1974, the plaintiff, a patient in a convalescent home, applied for public assistance from the State of Connecticut under its Title XIX medical assistance program. See General Statutes, c. 302, part IV. The plaintiff's application form stated that on May 22, 1973, her savings account with

a Hartford bank in the amount of $27,427.88 had been transferred to trust accounts for her grandchildren to be used for their college expenses. The application was denied on the ground that this disposition of money was in fact a transfer of property without receipt of fair value, making the plaintiff ineligible for Title XIX medical assistance. The plaintiff then requested and was given a statutory fair hearing under §§ 17-2a and 17-2b of the General Statutes. The fair hearing officer authorized by the welfare commissioner to conduct the hearing upheld the denial of the plaintiff's application for medical assistance, and the plaintiff appealed the fair hearing decision to the Court of Common Pleas, pursuant to § 17-2b.

One of the conditions of eligibility for medical assistance is that the applicant shall not have made, "within seven years prior to the date of application for such aid, an assignment or transfer or other disposition of property without reasonable consideration." General Statutes §§ 17-109(e), 17-134e. The fair hearing officer found that the money in the bank account always had been intended for the grandchildren's college expenses; made no finding as to the creation of a trust prior to May 22, 1973, when the plaintiff transferred the money from her savings account to a designated trust fund for her grandchildren; and concluded that by this transfer the plaintiff did in fact dispose of $27,427.88 without receipt of fair value. The trial court, however, found that the facts as disclosed by the record favor the conclusion that a trust account was created by the plaintiff's husband in 1967 and, therefore, no transfer of the plaintiff's personal property was made in 1973 but rather a mere change of bank account numbers and the substitution of the plaintiff's son as trustee.

The Uniform Administrative Procedure Act provides that the judicial review of an agency decision shall be confined to the record and that the court shall not substitute its judgment for that of the agency as to the weight of the evidence

on quesions of fact. General Statutes § 4-183 (f) and (g). The trial court in this case concluded that the decision of the agency was affected by an error of law and sustained the appeal. General Statutes § 4-183(g)(4).

We, however, are not persuaded that the trial court's conclusion that a trust was created in 1967 is supported by the evidence and the applicable law. The reliable, probative and substantial evidence before the fair hearing officer indicates that on May 2, 1973, when the plaintiff's husband died, the bank account in question was held jointly by the plaintiff and her husband. After her husband's death, the plaintiff, on May 22, 1973, issued a letter[1] purporting to transfer this account to a trust account. Over a period of years, the plaintiff and her husband had three different savings accounts in their names. On February 3, 1967, the plaintiff and her husband withdrew the sum of $7,500 from one bank account having a balance of $11,174.41 and placed this sum of $7,500 in a new account. On April 23, 1970, when the new account had a balance of $19,190.15, the sum of $15,000 was withdrawn and placed in a "choice passbook account" bearing a higher rate of interest. This third account was No. 019-2-00042-0 with the Hartford National Bank. On April 5, 1972, an additional sum of $4,661.15 was deposited in this account and the maturity date extended to April 5, 1974. The passbook record

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"Hartford, Conn.
May 22, 1973

[1]To Whom It May Concern:

I, Ida M. Hansen, being of sound mind, do transfer the total amount in account #019-2-00042-0 of the Hartford National Bank & Trust Company to a trust account to be established in the name of or names of my grandchildren.

This money is to be used for college expenses only that may be incurred by my grandchildren, Jo-Ann P. Hansen, Mark J. Hansen, and Holly L. Hansen. This account will be administered by their parents, Robert E. and Janet W. Hansen.

This is done at the wishes of my late husband, Johannes E. Hansen, whose intention it was to make such a transfer prior to his death. I am fully in agreement with this wish.

Ida M. Hansen"

on this later account discloses that no withdrawals were made until August 22, 1973, when the sum of $27,427.88 was withdrawn and the account was closed. There is evidence that the plaintiff and her husband intended to provide money for their grandchildren's college education. There is, however, no substantial evidence that the plaintiff and her husband ever did more than manifest a mere intention to create a trust at some subsequent time.

One owning property can create an enforceable trust by a declaration that he holds the property as trustee for the benefit of another person. Restatement (Second), 1 Trusts § 17(a); 1 Scott, Trusts (3d Ed.) § 17.1. An oral declaration may be sufficient to create an inter vivos trust of personal property, even without consideration and without delivery. *Hebrew University Assn.* v. *Nye*, 148 Conn. 223, 229, 169 A.2d 641; 1 Scott, op. cit. §§ 28, 32.2. Moreover, the settlor may reserve extensive powers over the administration of a trust. *DiSesa* v. *Hickey*, 160 Conn. 250, 264, 278 A.2d 785; *Cherniack* v. *Home National Bank & Trust Co.*, 151 Conn. 367, 369, 198 A.2d 58. No trust, however, is created unless the settlor presently and unequivocally manifests an intention to impose upon himself enforceable duties of a trust nature. *Hebrew University Assn.* v. *Nye*, supra; see *Stamford Savings Bank* v. *Everett*, 132 Conn. 92, 95, 42 A.2d 662; 76 Am. Jur. 2d, Trusts, § 34. "If what has been done falls short of showing the complete establishment of a fiduciary relationship, as where the intent to become a trustee is doubtful because what was said or done is as compatible with an intent to make a future gift as with an intent to hold the legal title to property for the exclusive benefit of another, the proof fails to show more than a promise without consideration." *Cullen* v *Chappell*, 116 F.2d 1017, 1018 (2d Cir.).

In this case there was no written declaration of trust before May 22, 1973, and none of the bank accounts shows

any manifestation of intent to create a trust. Section 36-110(1)(a) of the General Statutes provides that no savings bank, state bank or national banking association "shall accept any deposit made by one person in trust for another unless the same is accompanied by a statement signed by the depositor giving the name and residence of the beneficiary." See *Fasano* v. *Meliso*, 146 Conn. 496, 152 A.2d 512. Section 36-3 provides that when a joint survivorship deposit is made or such an account is issued, the making of the deposit or the issuance of the account in such form shall, "in the absence of fraud or undue influence, or other clear and convincing evidence to the contrary, be prima facie evidence, in any action or proceeding respecting the ownership of, or the enforcement of the obligation created or represented by, such deposit or account, of the intention of all of the named owners thereof to vest title to such deposit or account, including all additions and increments thereto, in such survivor or survivors." See *Grodzicki* v. *Grodzicki*, 154 Conn. 456, 226 A.2d 656.

The evidential history pertaining to the three joint savings accounts is consistent with the ordinary management of savings accounts which seeks federal deposit insurance coverage and higher interest rates and by itself affords no proper basis for an inference of manifestation of intent to create an enforceable trust. That the plaintiff or her husband might have intended to draw upon the joint accounts at some time to provide for the costs of a college education for their grandchildren does not establish that the latter had a beneficial interest in the accounts. *Stamford Savings Bank* v. *Everett*, supra. Although there is an absence of evidence establishing creation of a valid trust, there is substantial evidence that the plaintiff did in fact dispose of $27,427.88 without receipt of fair value as concluded by the fair hearing officer.

There is error, the judgment is set aside and the case is remanded with direction to render judgment dismissing the appeal.[2]

In this opinion the other judges concurred.

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[2]Section 17-109(e) of the General Statutes provides that one condition of eligibility is that a person applying for assistance "has not made, within seven years prior to the date of application for such aid, an assignment or transfer or other disposition of property without reasonable consideration or for the purpose of qualifying for an award." On December 10, 1976, a memorandum of decision in the case of *Buckner* v. *Maher* was filed in the United States District Court (D. Conn.) holding that this statute creates an improper presumption and violates the federal supremacy clause. No such claim was made in this case at any stage of the proceedings.

No. 76-1349

In the Supreme Court of the United States

OCTOBER TERM, 1977

EDWARD W. MAHER, CONNECTICUT COMMISSIONER OF SOCIAL SERVICES, ET AL., APPELLANTS

v.

MARY BUCKNER, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

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Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1977

No. 76-1349

EDWARD W. MAHER, CONNECTICUT COMMISSIONER OF SOCIAL SERVICES, ET AL., APPELLANTS

v.

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This memorandum is submitted in response to the Court's order of May 23, 1977, inviting the Solicitor General to express the views of the United States.

STATEMENT

Section 17-85, Conn. Gen. Stat. Ann. (1975), provides that an otherwise eligible applicant under the federally assisted program of aid to families with dependent children (AFDC) (42 U.S.C. (and Supp. V) 601 *et seq.*) is entitled to benefits only "if such applicant has not made, within seven years prior to the date of such application for aid, an assignment or transfer or other disposition of property without reasonable consideration or for the purpose of qualifying for an award * * *." Section 17-109, Conn. Gen. Stat. Ann. (1975), places an identical condition upon eligibility for old

age assistance, including benefits under the federally assisted medicaid program (42 U.S.C. (and Supp. V) 1396 *et seq.*).[1]

Appellees filed these class actions for declaratory and injunctive relief against appellant Connecticut Commissioner of Social Services, contending that the above Connecticut statutes are inconsistent with the Social Security Act and thus invalid under the Supremacy Clause and that the statutes deprive them of due process and equal protection (J.S. App. A-2). Appellees Galonek and Bennett had been denied medicaid benefits under Section 17-109 because they had transferred property within the previous seven years for less than reasonable consideration (J.S. App. A-5 to A-6); appellees Huckle and Buckner had been denied AFDC benefits under Section 17-85 apparently because they could not prove that certain transfers of property within the previous seven years had been made for reasonable consideration (J.S. App. A-6 to A-7). Appellant has not contended that appellees acted fraudulently or transferred their property for the purpose of obtaining benefits (J.S. App. A-7 to A-8).

A three-judge district court was convened pursuant to 28 U.S.C. 2281. The court determined that it had jurisdiction over appellees' constitutional claims under 42

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[1]The Old Age Assistance program (OAA), established by Title I of the Social Security Act, 49 Stat. 620, as amended, 42 U.S.C. 301 *et seq.*, was repealed (with exceptions not relevant here) effective January 1, 1974. Section 303, 86 Stat. 1484. However, under Title XIX of the Act (providing for the establishment of medicaid programs), participating States have the option of providing medical assistance to one of the three categories of the aged described at 45 C.F.R. 248.1(b)(2) (i)-(iii). Connecticut has elected under 45 C.F.R. 248.1(b)(2)(iii) to provide medical assistance to "[i]ndividuals who meet the eligibility criteria used for medical assistance on January 1, 1972." Section 17-109, Conn. Gen. Stat. Ann. (1975), was a part of the eligibility criteria on that date and thus has a continuing importance despite repeal of Title I of the Act.

U.S.C. 1983 and 28 U.S.C. 1343 and thus proceeded to consider appellees' statutory claims under the doctrine of pendent jurisdiction. See *Hagans* v. *Lavine*, 415 U.S. 528. The court held the Connecticut statutes inconsistent with the Social Security Act to the extent that they deny eligibility for benefits solely because of a disposition of property without reasonable consideration. The court recognized, however, "the legitimate state need for strong legislative controls to curb fraudulent transfers undertaken for the very purpose of qualifying the property transferor for immediate welfare assistance" (J.S. App. A-3), and it left standing those portions of the statutes that deny benefits because of a disposition of property made "for the purpose of qualifying for an award" (J.S. App. A-15, n. 10). The court entered declaratory and injunctive relief in accordance with its opinion (J.S. App. A-16 to A-18).

DISCUSSION

The decision of the district court is correct and does not warrant this Court's plenary review.

The AFDC program, set forth in Title IV of the Social Security Act, 49 Stat. 627, as amended, 42 U.S.C. 601 *et seq.*, was enacted in 1935 to provide assistance to "needy dependent children." The medicaid program, enacted thirty years later in Title XIX of the Act, 87 Stat. 960, as amended, 42 U.S.C. (and Supp. V) 1396 *et seq.*, was intended to provide "necessary medical services" to certain needy individuals "whose income and resources are insufficient to meet the costs of * * * [those] services" (42 U.S.C. (and Supp. V) 1396). Both programs contemplate "a scheme of cooperative federalism" (*King* v. *Smith*, 392 U.S. 309, 316; see also *Shea* v. *Vialpando*, 416 U.S. 251), in which the states participate on a voluntary basis.

In view of the states' substantial role in the management and funding of these programs, this Court has expressed a reluctance to interfere with efforts "to assure that limited state welfare funds be spent on behalf of those genuinely incapacited and most in need, and to cope with the fiscal hardships enveloping many state and local governments." *New York State Department of Social Services* v. *Dublino*, 413 U.S. 405, 413. Under appropriate circumstances states may impose on potential welfare recipients collateral conditions for eligibility that are required by administrative necessity or justified by underlying state welfare objectives. *Wyman* v. *James*, 400 U.S. 309; *New York State Department of Social Services* v. *Dublino, supra*. Such conditions "are not necessarily invalid, any more than other supplementary regulations promulgated within the legitimate sphere of state administration." *New York State Department of Social Services* v. *Dublino, supra*, 413 U.S. at 422. As this Court recently noted, "we should not lightly infer a congressional intention to preclude the Secretary from recognizing legitimate local policies in determining eligibility." *Batterton* v. *Francis*, No. 75-1181, decided June 20, 1977 (slip op. 15).[2]

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[2]The Secretary's regulations with respect to public assistance programs provide (45 C.F.R. 233.10(a)(1)(ii)(B)):

> A State may [i]mpose conditions upon applicants for and recipients of public assistance which, if not satisfied, result in the denial or termination of public assistance, if such conditions assist the State in the efficient administration of its public assistance programs, or further an independent State welfare policy, and are not inconsistent with the provisions and purposes of the Social Security Act.

The validity of this regulation has been sustained by the United States District Court for the District of Columbia. See *National Welfare Rights Organization* v. *United States Department of Health, Education, and Welfare*, No. 264-73 (January 28, 1976).

The conditions imposed by participating states nevertheless must be consistent with the terms and policies of the Act. *Carleson* v. *Remillard*, 406 U.S. 598; *Townsend* v. *Swank*, 404 U.S. 282; *King* v. *Smith*, *supra*. See also 42 U.S.C. (and Supp. V) 1396a. "[T]he Federal Government, unless barred by some controlling constitutional prohibition, may impose the terms and conditions upon which its money allotments to the States shall be disbursed, and * * * any state law or regulation inconsistent with such federal terms and conditions is to that extent invalid." *King* v. *Smith, supra*, 392 U.S. at 333 n. 34. "[O]nce the federal standard of eligibility is defined, a participating State may not deny aid to persons who come within it in the absence of a clear indication that Congress meant the coverage to be optional." *Burns* v. *Alcala*, 420 U.S. 575, 580. Unless it can reasonably be inferred from the Act and its underlying principles that Congress intended to allow states to withhold benefits from a particular class of otherwise eligible recipients, the state restrictions must be held invalid and unenforceable.

As the purpose of the AFDC and medicaid programs is to help persons in genuine need, any limitation on eligibility imposed by the states must be narrowly cut to fit an important state objective that is itself consistent with the policies of the federal program. See *New York State Department of Social Services* v. *Dublino, supra*. With regard to both the AFDC and the medicaid programs the Social Security Act provides that participating states are to take into consideration the applicants' "income and resources." 42 U.S.C. (and Supp. V) 602(a)(7) and 1396a(a)(10). In turn, the Secretary's regulations provide that "income and resources will be reasonably evaluated." 45 C.F.R. 233.20(a)(3)(E) and 248.3(b)(1).

We believe that the Connecticut statutory provisions held invalid below do not effect a reasonable evaluation of resources. Those provisions deny benefits to otherwise

eligible persons who have transferred assets within the previous seven years for less than a "reasonable consideration," regardless of the circumstances of the transfer. Thus, admittedly needy persons can be denied assistance solely because they were defrauded, exchanged property for needed services not recognized as "reasonable consideration," or suffered unforseeable financial reversals after a good faith transfer, even though they had at the time no expectation, much less intention, of applying for government benefits. The provisions neither make allowance for mitigating circumstances nor permit applicants to offer any justification or excuse. Cf. *Lerner* v. *Division of Family Services, Department of Health and Social Services*, 235 N.W. 2d 478 (Sup. Ct. Wisc.). In our view, such an unqualified attribution of transferred assets to the transferor constitutes an unreasonable evaluation of the transferor's resources and therefore is contrary to the Social Security Act and the Secretary's regulations.[3]

CONCLUSION

The judgment of the district court should be affirmed.

Respectfully submitted.

WADE H. MCCREE, JR.,
Solicitor General.

SEPTEMBER 1977.

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[3] In their administration of the AFDC and medicaid programs, the states have a legitimate interest in preventing fraud and assuring the equitable distribution of available funds. That interest continues to be served by those portions of Connecticut's statutes that deny benefits to persons who transfer assets in order to become eligible for assistance. Those statutory provisions were left standing by the decision below, and their validity is not at issue. But the provisions held invalid below sweep too broadly to be justified as anti-fraud devices.